

Executive Summary – Enforcement Matter – Case No. 40703
City of Driscoll
RN102983442
Docket No. 2010-1852-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – AIR, MSW, IHW

Small Business:

No

Location(s) Where Violation(s) Occurred:

Driscoll Landfill, on the northwest corner of Daisy Lane Road and County Road 79, east of Highway 77, Driscoll, Nueces County

Type of Operation:

Closed landfill

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: October 14, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$12,000

Amount Deferred for Expedited Settlement: \$2,400

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$290

Total Due to General Revenue: \$9,310

Payment Plan: 35 payments of \$266 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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City of Driscoll
RN102983442
Docket No. 2010-1852-MLM-E

Investigation Information

Complaint Date(s): August 17, 2010
Complaint Information: Alleged smoke nuisances.
Date(s) of Investigation: August 17, 2010
Date(s) of NOE(s): November 2, 2010

Violation Information

1. Failed to prohibit the burning of municipal solid waste ("MSW") for the purpose of disposal. Specifically, MSW, including but not limited to, plastic, building materials, vehicles, tires, paint cans, and various household items, was burning without authorization on August 17, 2010 and September 8, 2010 [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to prevent the unauthorized disposal of MSW. Specifically, approximately 2,952 cubic yards of plastic, assorted metal, treated lumber, building materials, roofing shingles, metal wire, vehicles, tires and rims, bicycles, chairs, microwaves, air conditioning window units, mattresses, furniture, insulation, paint cans, dvd players, various household items, a dryer, and other assorted MSW were disposed of at the Facility [30 TEX. ADMIN. CODE § 330.15(c)].
3. Failed to conduct a hazardous waste determination for each solid waste generated. Specifically, a hazardous waste determination had not been conducted for the contents of a 55-gallon drum at the Facility [30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS § 262.11].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, cease burning and disposing of any additional waste at the Facility;
- b. Within 30 days:
 - i. Conduct waste determinations on all unknown solid waste, including but not limited to the unmarked 55-gallon drum containing unknown liquid waste;
 - ii. Remove all MSW and industrial hazardous waste from the Facility and dispose of it at an authorized facility; and

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Docket No. 2010-1852-MLM-E

c. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Philip Aldridge, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-0855; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: The Honorable John Aguilar, Mayor, City of Driscoll, P.O. Box 178,
Driscoll, Texas 78351
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	8-Nov-2010	Screening	12-Nov-2010	EPA Due	
	PCW	15-Nov-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Driscoll		
Reg. Ent. Ref. No.	RN102983442		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40703	No. of Violations	3
Docket No.	2010-1852-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media	Air and Industrial Hazardous Waste	Enf. Coordinator	Philip Aldridge
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$12,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment due to compliance history.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts \$8,746
Approx. Cost of Compliance \$33,652
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$12,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$12,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$12,000**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$2,400**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$9,600**

Screening Date 12-Nov-2010

Docket No. 2010-1852-MLM-E

PCW

Respondent City of Driscoll

Policy Revision 2 (September 2002)

Case ID No. 40703

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102983442

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 12-Nov-2010

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PCW

Respondent City of Driscoll

Case ID No. 40703

Policy Revision 2 (September 2002)

Reg. Ent. Reference No. RN102983442

PCW Revision October 30, 2008

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prohibit the burning of municipal solid waste ("MSW") for the purpose of disposal. Specifically, MSW, including but not limited to, plastic, building materials, vehicles, tires, paint cans, and various household items, was burning without authorization on August 17, 2010 and September 8, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

2 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,000

Two single events are recommended (one per occurrence).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7,452

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent City of Driscoll
Case ID No. 40703
Reg. Ent. Reference No. RN102983442
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$7,452	16-Aug-2010	17-Aug-2010	0.00	\$0	\$7,452	\$7,452
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to have properly disposed of the MSW at an authorized facility rather than burning it. The Date Required is one day prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance

\$7,452

TOTAL

\$7,452

Screening Date 12-Nov-2010

Docket No. 2010-1852-MLM-E

PCW

Respondent City of Driscoll

Policy Revision 2 (September 2002)

Case ID No. 40703

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102983442

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to prevent the unauthorized disposal of MSW. Specifically, approximately 2,952 cubic yards of plastic, assorted metal, treated lumber, building materials, roofing shingles, metal wire, vehicles, tires and rims, bicycles, chairs, microwaves, air conditioning window units, mattresses, furniture, insulation, paint cans, dvd players, various household items, a dryer, and other assorted MSW were disposed of at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual		X	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix
Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3

87 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Three monthly events are recommended from the August 17, 2010 investigation to the November 12, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement Offer

Ordinary

N/A

x

(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,097

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

Economic Benefit Worksheet

Respondent City of Driscoll
Case ID No. 40703
Req. Ent. Reference No. RN102983442
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$22,000	17-Aug-2010	16-Aug-2011	1.00	\$1,097	n/a	\$1,097
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the MSW and dispose of it at a facility authorized to accept the waste, per estimate provided by the Respondent. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$22,000

TOTAL

\$1,097

Screening Date 12-Nov-2010

Docket No. 2010-1852-MLM-E

PCW

Respondent City of Driscoll

Policy Revision 2 (September 2002)

Case ID No. 40703

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102983442

Media [Statute] Municipal Solid Waste

Enf. Coordinator Phillip Aldridge

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 335.62 and 40 Code of Federal Regulations § 262.11

Violation Description

Failed to conduct a hazardous waste determination for each solid waste generated. Specifically, a hazardous waste determination had not been conducted for the contents of a 55-gallon drum at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

66 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$197

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent City of Driscoll
Case ID No. 40703
Reg. Ent. Reference No. RN102983442
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$4,200	8-Sep-2010	16-Aug-2011	0.94	\$197	n/a	\$197

Notes for DELAYED costs

Estimated cost to conduct hazardous waste determination for the contents of the 55-gallon drum. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,200

TOTAL

\$197

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600623722	City of Driscoll	Classification: AVERAGE	Rating: 2.17
Regulated Entity:	RN102983442	Driscoll Landfill	Classification: AVERAGE	Site Rating: 3.01
ID Number(s):	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT		82
Location:	Northwest corner of Daisy Lane Road and County Road 79, East of Highway 77 in Driscoll, Nueces County, Texas			
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	November 09, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 09, 2005 to November 09, 2010			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Philip Aldridge Phone: (512) 239-0855

Site Compliance History Components

- Has the site been in existence and/or operation for the full five year compliance period? Yes
- Has there been a (known) change in ownership/operator of the site during the compliance period? No
- If Yes, who is the current owner/operator?
N/A
- If Yes, who was/were the prior owner(s)/operator(s)?
N/A
- When did the change(s) in owner or operator occur?
N/A
- Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- Any criminal convictions of the state of Texas and the federal government.
N/A
- Chronic excessive emissions events.
N/A
- The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- Environmental audits.
N/A
- Type of environmental management systems (EMSs).
N/A
- Voluntary on-site compliance assessment dates.
N/A
- Participation in a voluntary pollution reduction program.
N/A
- Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF DRISCOLL
RN102983442**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-1852-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Driscoll ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns a closed landfill at the northwest corner of Daisy Lane Road and County Road 79, east of Highway 77 in Driscoll, Nueces County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste ("MSW") and industrial hazardous waste ("IHW") as defined in TEX. HEALTH & SAFETY CODE ch. 361 and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 7, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twelve Thousand Dollars (\$12,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Ninety Dollars (\$290) of the administrative penalty and Two Thousand Four Hundred Dollars (\$2,400) is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Respondent to pay all or part of the deferred penalty.

The remaining amount of Nine Thousand Three Hundred Ten Dollars (\$9,310) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Sixty-Six Dollars (\$266) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner of the Facility, the Respondent is alleged to have:

1. Failed to prohibit the burning of MSW for the purpose of disposal, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during the investigations conducted on August 17, 2010 and September 8, 2010. Specifically, MSW, including but not limited to, plastic, building materials, vehicles, tires,

paint cans, and various household items, was burning without authorization on August 17, 2010 and September 8, 2010.

2. Failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on August 17, 2010. Specifically, approximately 2,952 cubic yards of plastic, assorted metal, treated lumber, building materials, roofing shingles, metal wire, vehicles, tires and rims, bicycles, chairs, microwaves, air conditioning window units, mattresses, furniture, insulation, paint cans, dvd players, various household items, a dryer, and other assorted MSW were disposed of at the Facility.
3. Failed to conduct a hazardous waste determination for each solid waste generated, in violation of 30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS § 262.11 as documented during an investigation conducted on September 8, 2010. Specifically, a hazardous waste determination had not been conducted for the contents of a 55-gallon drum at the Facility.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Driscoll, Docket No. 2010-1852-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease burning and disposing of any additional waste at the Facility;

- b. Within 30 days after the effective date of this Agreed Order:
 - i. Conduct waste determinations on all unknown solid waste, including but not limited to the unmarked 55-gallon drum containing unknown liquid waste, in accordance with 30 TEX. ADMIN. CODE § 335.62;
 - ii. Remove all MSW and IHW from the Facility and dispose of it at an authorized facility; and
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes

aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

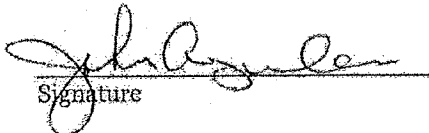
11/3/11
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

07-05-2011
Date

John Aguilar
Name (Printed or typed)
Authorized Representative of
City of Driscoll

Mayor
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.